Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 75-43

FIRST NATIONAL BANK AND TRUST COMPANY OF VIDALIA, GEORGIA,
Petitioner,

vs.

FIDELITY STANDARD LIFE INSURANCE COMPANY,
Respondent.

RESPONDENT'S BRIEF

In Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit [Appendix A][1] is reported at 510 F.2d 272 (1975). The opinion of the United States District Court for the Southern District of Georgia [Appendix C] is reported at 382 F.Supp. 956 (1974).

[1] References to the Appendix are to petitioner's appendix attached to the petition for a writ of certiorari.

JURISDICTION

The judgment of the Court of Appeals was entered on March 24, 1975 and a timely petition for rehearing was denied on April 14, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether in an action brought in a federal district court in Georgia to enforce a Louisiana judgment under the full faith and credit clause of the United States Constitution, the judgment debtor may attempt to defeat full faith and credit enforcement by relitigating a challenge to the jurisdiction of the Louisiana court rendering the judgment, where it conclusively appears from the record before the federal district court that the jurisdictional challenge was raised, litigated and decided adversely to the judgment debtor in the Louisiana proceedings and is now on direct appeal to the appellate courts of Louisiana.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

The constitutional provision involved is the full faith and credit clause of the Constitution of the United States, Article IV, Section 1, which provides:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

The statute involved is 28 U.S.C. § 1738, which provides in relevant part:

> "The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
>
> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

STATEMENT OF THE CASE

Respondent, Fidelity Standard Life Insurance Company (hereinafter "Fidelity Standard"), a Louisiana insurance company, instituted this action in the United States District Court for the Southern District of Georgia to enforce a judgment obtained against petitioner, First National Bank & Trust Company of Vidalia, Georgia (hereinafter the "Bank"), in the Civil District Court for the Parish of Orleans, Louisiana. Enforcement of the Louisiana judgment was sought pursuant to the full faith and credit clause of the United States Constitution, Article IV, Section 1. Federal jurisdiction was premised upon diversity of citizenship. 28 U.S.C. § 1332.

The litigation in the Civil District for the Parish of Orleans, Louisiana was commenced by Fidelity Standard in 1968. Subsequently, the Bank filed an exception to the jurisdiction of the Louisiana court. [R. 118-121].[2] In connection with the Bank's

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[2] References to the Record are to the original record certified to the Court of Appeals for the Fifth Circuit by the Clerk of the United States District Court for the Southern District of Georgia.

jurisdictional exception, the depositions of the Bank's executive vice president and counsel were submitted and the legal arguments respecting the Bank's challenge to jurisdiction under the Louisiana long-arm statute [LSA-R.S. 13:3201] were fully briefed and argued in the Louisiana proceedings [R. 124-264]. Thereafter, the Louisiana court considered and overruled the Bank's jurisdictional exception. [R. 121].

Following a trial on the merits, judgment was entered by the Louisiana court on December 10, 1973. Insofar as that judgment pertains to the present action, it decrees judgment in favor of Fidelity Standard and against the Bank in the principal amount of $281,685.71, plus interest from October 3, 1968 and the costs of the Louisiana proceedings. [R. 4-6]. The Bank subsequently initiated a devolutive appeal under Louisiana law [R. 122-123], which is presently pending in the Louisiana Court of Appeals for the Fourth Circuit.

Since the Bank elected not to prosecute a suspensive appeal under Louisiana law,[3] Fidelity Standard commenced its action in the United States District Court for the Southern District of Georgia on May 6, 1974 to obtain enforcement of the Louisiana judgment.[4] [R. 1-15]. On July 22, 1974, relying on a properly authenticated copy of the Louisiana judgment and the record of the Louisiana proceedings pertinent to the Bank's jurisdictional challenge, Fidelity Standard filed a motion for summary

[3] Under Louisiana law, a suspensive appeal, as distinguished from the devolutive appeal initiated by the Bank in the Louisiana appellate courts, is one which suspends the effect of the judgment pending the outcome on appeal. LSA-C.C.P. Art. 2087, 2123 and 2124.

[4] Security Mutual Casualty Company, listed as third-party defendant in the caption of the petition for a writ of certiorari, was subsequently brought into this litigation by the Bank pursuant to Rule 14 of the Federal Rules of Civil Procedure. Security Mutual did not oppose Fidelity Standard's motion for summary judgment against the Bank and did not participate in the appeal to the Fifth Circuit Court of Appeals. Counsel for Security Mutual has nevertheless been served with copies of Respondent's Brief.

judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. [R. 115-264]. In opposition thereto, the Bank reasserted its challenge to the jurisdiction of the Louisiana court.

By order dated October 2, 1974, the District Court granted Fidelity Standard's motion for summary judgment and concluded that the Bank was barred from relitigating the question of the Louisiana court's jurisdiction. The judgment of the District Court entered on October 15, 1974 was affirmed on the summary calendar by the Court of Appeals for the Fifth Circuit on March 24, 1975, and rehearing was denied on April 14, 1975. [Appendix A, B and C].

REASONS FOR DENYING THE WRIT

A. The Decision of the Court of Appeals Is in Full Accord With Applicable Decisions of This Court.

While it is true that when requested to enforce the judgment of a court of another state a federal district court may inquire into the foreign court's jurisdiction, the scope of that inquiry has been clearly and precisely delineated by this Court to exclude the relitigation of jurisdictional questions determined by the court rendering the judgment. *Durfee v. Duke*, 375 U.S. 106 (1963); *Sherrer v. Sherrer*, 334 U.S. 343 (1948); *Trienies v. Sunshine Mining Company*, 308 U.S. 66 (1939); *Davis v. Davis*, 305 U.S. 32 (1938); *Baldwin v. Iowa State Traveling Men's Association*, 283 U.S. 522 (1931).

In *Durfee v. Duke, supra*, this Court defined the appropriate scope of such an inquiry as follows:

> ". . . while it is established that a court in one State, when asked to give effect to the judgment of a court in another State, may constitutionally inquire into the foreign court's jurisdiction to render that judgment, the modern decisions of this Court have carefully delineated the permissible scope of such an inquiry. From these decisions there emerges the general rule that a judgment is entitled to full faith and credit—even as to questions of jurisdiction—when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment." 375 U.S. at 111.

In order that there be no misunderstanding concerning its ruling in *Durfee v. Duke*, this Court further stated in its opinion:

> ". . . we hold in this case that the federal court in Missouri had the power and, upon proper averments, the duty to inquire into the jurisdiction of the Nebraska courts to render the decree quieting title to the land in the petitioners. We further hold that when that inquiry disclosed, as it did, that the jurisdictional issues had been fully and fairly litigated by the parties and finally determined in the Nebraska courts, the federal court in Missouri was correct in ruling that further inquiry was precluded." 375 U.S. at 116.

Consistent with the holding in *Durfee v. Duke*, the Court of Appeals agreed with the District Court that further inquiry into the Bank's challenge to the jurisdiction of the Louisiana court was precluded, when it appeared from the record that the jurisdictional challenge had been raised, fully litigated and decided adversely to the Bank in the Louisiana proceedings. [Appendix A]. Thus, the Court of Appeals in rendering its decision fully adhered to the well-established precedents of this Court, and a review of the Court of Appeals decision on writ of certiorari is therefore unwarranted.

B. Petitioner Has Failed to Advance Any of the Considerations Enumerated in Rule 19(1)(b) as Governing Review on Certiorari.

In support of the petition for a writ of certiorari, there is no direct argument on behalf of the Bank that the Court of Appeals decision is not in accord with applicable decisions of this Court. To the contrary, the Bank has acknowledged the controlling precedent established by this Court's decision in *Durfee v. Duke*. [Petition pp. 9-10].

Only by inference and its reliance on *St. Clair v. Cox*, 106 U.S. 350 (1882); *Adam v. Saenger*, 303 U.S. 59 (1938); and *Milliken v. Meyer*, 311 U.S. 457 (1940) has the Bank even suggested that the Court of Appeals may have departed from earlier decisions of this Court. [Petition pp. 9-12]. In response to

this suggestion, Fidelity Standard respectfully submits that a review of the decisions cited by the Bank indicates that not only are those decisions inapplicable to the present case, but they are consistent with this Court's later pronouncements in *Durfee v. Duke*, which were cited by the Court of Appeals as controlling in the present case.

In each of the cases relied upon by the Bank, a foreign judgment, either entered by default or in the absence of any appearance by the judgment debtor, was subsequently attacked in another jurisdiction on the ground that service of process in the original action was insufficient to confer jurisdiction over the judgment debtor. In contrast, the Bank in the present case does not contest service of process in the original action, and it is undisputed that the Bank appeared in the Louisiana proceedings, unsuccessfully litigated its exception to the jurisdiction of the Louisiana court, and thereafter, unsuccessfully proceeded to trial on the merits.

Moreover, the legal proposition that the jurisdiction of the foreign court is open to inquiry only where that issue has not been previously litigated by the foreign court, which was clearly enunciated in *Durfee v. Duke*, was acknowledged in *Adam v. Saenger, supra*, cited by the Bank, wherein this Court stated:

> ". . . in a suit upon the judgment of another state the jurisdiction of the court which rendered it is open to inquiry, . . . and when the matter of fact or law upon which jurisdiction depends was not litigated in the original suit it is a matter to be adjudicated in the suit founded upon the judgment." 303 U.S. at 62.

Furthermore, not only is there no suggestion on behalf of the Bank that the question presented for review in the present case has not been settled by this Court, but it clearly appears that the relevant question presented is well settled by this Court's decision

in *Durfee v. Duke* and the decisions of this Court cited therein. Similarly, there is no suggestion that the Court of Appeals decision is in conflict with judicial decisions in other circuits, and it is apparent that such is not the case. See, e.g. *U.S. v. Secor*, 476 F.2d 766 (2nd Cir. 1973); *Somportex, Ltd. v. Philadelphia Chewing Gum Corporation*, 453 F.2d 435 (3rd Cir. 1971) cert. denied 405 U.S. 1017 (1972); *Hazen Research, Inc. v. Omega Minerals, Inc.*, 497 F.2d 151 (5th Cir. 1974); *Sawyer v. Davis*, 408 F.2d 358 (8th Cir. 1969); *Flying Tiger Lines, Inc. v. Landy*, 370 F.2d 46 (9th Cir. 1966); *Dairy Distributors, Inc. v. Western Conference of Teamsters*, 294 F.2d 348 (10th Cir. 1961).

Thus, since the Bank has failed to advance any of the "special and important reasons" enumerated in Rule 19(1)(b) of this Court as justifying a review on certiorari, such a review of the Court of Appeals decision in the present case is unwarranted.

C. The Decision of the Court of Appeals Correctly Applied the Decisions of This Court to the Facts of the Present Case.

In the noted absence of any designation of "special and important reasons" warranting review on certiorari by this Court, the Bank's argument is reduced to a contention that the Court of Appeals and District Court incorrectly applied *Durfee v. Duke* to the facts of the present case. Such a contention in and of itself suggests that the present case is not of such significant importance as to merit a review by this Court.

Moreover, even considering the merits of the Bank's contention, it should be noted that contrary to the Bank's statement that the District Court looked only to the minute entry overruling the Bank's jurisdictional exception [Petition p. 12], the opinion of the District Court reflects that the District Court reviewed the entire Louisiana record pertinent to the Bank's jurisdictional

challenge in the Louisiana proceedings. [Appendix C]. In addition to the pleading raising the jurisdictional exception and the minute entry denoting that the Bank's exception was overruled, the record reviewed by the District Court contained the extensive briefs filed in connection with the jurisdictional question and the depositions of two representatives of the Bank submitted in support of the Bank's jurisdictional exception. [R. 124-264]. In view of the record, Fidelity Standard respectfully submits that the Court of Appeals and the District Court correctly concluded under the undisputed facts of the present case that the jurisdictional issue had been duly raised, fully litigated and decided adversely to the Bank in the Louisiana proceedings and that relitigation of the Louisiana court's jurisdictional determination was precluded by *Durfee v. Duke*.[5]

Although the Bank attempts to invoke constitutional due process considerations by arguing in substance that it was deprived by the District Court of a full and fair hearing on its Louisiana jurisdictional challenge [Petition p. 12], there is no basis in the record to even suggest that the Bank was denied a full and fair opportunity to be heard in either the Louisiana proceedings or the proceedings in the District Court. To the contrary, it appears that the Bank has been furnished numerous opportunities in both state and federal courts to extensively assert and reassert its exception to the jurisdiction of the Louisiana court.

Essentially, the Bank's arguments in the present case are based upon nothing more than the Bank's dissatisfaction with the jurisdictional ruling of the Louisiana court, which is presently before

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[5] In addition to requiring that the jurisdictional issue have been "fully and fairly litigated" in the foreign court, *Durfee v. Duke* requires that the jurisdictional issue have been "finally determined" in the foreign court. 375 U.S. at 116. Although the Bank contested the finality of the Louisiana judgment in the proceedings in the District Court, that issue was not presented to the Court of Appeals for reasons amply demonstrated by the District Court's review of the applicable Louisiana law. [Appendix C].

the Louisiana appellate courts, and the District Court's ruling, which properly declined the Bank's invitation to collaterally review and reverse the jurisdictional ruling made in the Louisiana proceedings.[6] Such dissatisfaction, however, does not warrant a review of the Court of Appeals decision in the present case, which correctly applies the applicable decisions of this Court to the undisputed facts of record.

D. Petitioner Seeks to Present a Question for Review Which Was Not Ruled Upon by the Court of Appeals and Which Is Presently Pending in the Louisiana Appellate Courts.

The Bank further argues that the exercise of jurisdiction over the Bank by the Louisiana court is constitutionally impermissible. [Petition pp. 12-17]. Neither the Court of Appeals nor the District Court reached the merits of the Bank's jurisdictional challenge in the Louisiana proceedings, since to do so would have constituted a collateral review of the Louisiana court's jurisdictional determination in contravention of *Durfee v. Duke*, and rendered meaningless the principle of full faith and credit em-

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[6] Parenthetically, Fidelity Standard submits that had the District Court accepted the Bank's invitation to review the merits of the Louisiana court's jurisdictional ruling, it would have collaterally affirmed the ruling. The record before the District Court establishes that the Bank was transacting business in New Orleans, Louisiana between May 18 and 20, 1968 and that the Louisiana litigation arises out of business transactions which took place in Louisiana. During May, 1968, P. W. Tippett, Executive Vice President of the Bank, and Nat O. Carter, counsel for the Bank, traveled to New Orleans and [1] participated in a series of negotiations respecting loan transactions incident to which securities and funds were transferred from Fidelity Standard to the Bank, [2] prepared and executed certain documents in connection with the loan transactions, and [3] delivered the Bank's draft in the amount of $330,000.00 to the National Bank of Commerce in New Orleans. [R. 7-15, 153-264]. These contacts with the State of Louisiana are constitutionally sufficient to bring the Bank within the jurisdictional ambit of the Louisiana long-arm statute [LSA-R.S. 13:3201]. See Fidelity Standard's memorandum of law filed in the Louisiana proceedings. [R. 137-152].

bodied in Article IV, Section 1 of the United States Constitution and 28 U.S.C. § 1738.

The question which the Bank seeks to raise in this Court is now pending before the Louisiana Court of Appeals for the Fourth Circuit on direct appeal. While this Court may have an occasion in the future to consider the merits of the Louisiana court's jurisdictional ruling on writ of certiorari to the Louisiana Supreme Court, such consideration by this Court at this time is premature and does not warrant a review of the Court of Appeals decision in the present case.

CONCLUSION

For the foregoing reasons, Fidelity Standard respectfully urges that the Bank's petition for a writ of certiorari be denied.

Respectfully submitted

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